



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 8 November 2021  
**STATUS** Immediate

***Please note that the media summary is for the benefit of the media and does not form part of the judgment.***

*Lötter NO and Others v Minister of Water and Sanitation and Others (725/2020)*  
*[2021] ZASCA 159 (8 November 2021)*

### **MEDIA STATEMENT**

The Supreme Court of Appeal (SCA) today upheld the appeals of Casper Lötter and others, Francois Wiid and others and the South African Association for Water User Associations against the Minister of Water and Sanitation and others. These three matters had been heard together by a full court of the Gauteng Division of the High Court, Pretoria and were heard together by the SCA on appeal.

The central issues in these matters were whether s 25 of the National Water Act 36 of 1998 (the NWA) permitted the transfer of water use entitlements from one person to another and whether the purchase and sale of water use entitlements was prohibited. A majority of the SCA found that s 25 of the NWA allowed for the transfer of water use entitlements in two circumstances. First, s 25(1) empowered a water management institution to allow a holder of a water use entitlement for irrigation to use it temporarily for another purpose or to allow it to be used on another property by another person. Secondly, s 25(2) created a mechanism for permanent transfers of water use entitlements. It did so by means of a system in terms of which a water use entitlement holder surrenders their entitlement and a third party applies for a licence in respect of the surrendered water use entitlement. If the licence is granted by the responsible authority, the surrender of the water use entitlement becomes effective and the transfer occurs.

On the second aspect – whether people may buy and sell their water use entitlements – the starting point of the majority was that private persons are free to do anything that the law does not prohibit, unlike public bodies that may only do what the law authorises them to do. As the NWA does not prohibit trading in water use entitlements, people are free to engage in this practice. This freedom is subject to an important control: the transfer of water use entitlements in terms of s 25 requires the

approval of the regulatory authority created by the NWA to ensure that its objects are attained and that the public interest is furthered.

The minority agreed with the majority that water use entitlements could be transferred but held that trading in water use entitlements was not permitted because the NWA did not authorise the practice. It also held that trading in water was contrary to the purposes of the NWA.